IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2403 OF 2005

M/s. Concraft .. ..Petitioner
VERSUS
Vijay D. Parab .. ..Respondent

Mr.K.P.Anilkumar for petitioner
Mr.Jaiprakash Sawant for respondent

CORAM : P.V.KAKADE, J.

DATE : 21ST NOVEMBER,2005

P.C.:

1. Heard the learned counsel for both the parties. Rule, rule is made returnable forthwith.

2. By this Writ Petition the Petitioner has sought quashing of the order dated 16.6.2005 passed in Restoration Application No.20 OF 2004, which was rejected by the 6th Labour Court, Mumbai in respect of the Award passed against the Petitioner.

3. The Petitioner is the original 1st party company in original Reference (IDA) No.1129/98. According to the Petitioner, the Company had no knowledge of the

pending reference as there was no notice served upon them by the 2nd party. The Company had closed with effect from September, 2000 and due to which the office of the company was also closed. The applicant came to know fact of the exparte award on 5.2.2004 for the first time and also prayed that the ex-parte order dated 21.4.2004 be set aside and the matter be heard afresh. The present respondent opposed that application before the Labour Court on various grounds. The learned Labour Court after hearing both the parties came to the conclusion that the company had not led any oral evidence in the said ex-parte award and there was no evidence on record, which would show that the company had no knowledge of passing of the award. It is the case of the Petitioner company that though the award passed on 21.4.2001 they came to know about the fact of passing the award only on 5.2.2004 and hence the application to set aside the award came to be passed.

3. The learned counsel for the petitioner submitted that the company was not given any opportunity to lead the evidence to show that there was no notice of the proceedings pending before the labour court and therefore, they could not defend the cause and as such

the order of dismissal of the application sought to be set aside.

4. In this regard, it must be noted that it appears from the record that the Labour Court has sought to put negative burden on the party observing that the petitioner has not lead any evidence to show that the company was not having knowledge of the award. In fact if it was so, then the company should have been given opportunity to lead evidence in respect of their contention that they had no notice of the proceeding pending before the Labour Court and award passed thereon behind their back. In view of this factual matrix and without further elaboration, I must note here that ends of justice would be met if the application is heard afresh by the labour court giving opportunity to both the parties to lead proper evidence in this regard.

. Hence, the impugned order dated 16.6.2005 is hereby set aside. The matter is remanded to the Labour Court, Mumbai with direction that the Restoration Application (IDA) No.20 of 2004 in Reference (IDA) No.1129 of 1998 be heard afresh after giving opportunity to both sides to lead proper evidence, if any, and then

the matter should be adjudicated on merits within six weeks from the date of receipt of Writ of this Court. With this direction the petition stands disposed of with no order as to costs.

5. Needless to say that the implementation of the impugned order stands stayed pending the hearing of the Restoration Application in the Labour Court.

6. At this stage the learned counsel for the respondent prays for Stay of this order. However, in view of the fact that the matter is directed to be adjudicated within six weeks by the labour court, the plea for Stay is rejected.

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